IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A.No.: 502 of 1999.
Date of decision: 18.5.2007.

State of Himachal Pradesh ... Appellant

Versus

Krishan Lal and Another ... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No

For the appellant : Mr.Ashutosh Burathoki, Additional Advocate General.

For the respondent: Mr.Vinay Thakur, Advocate.

V.K. Ahuja, J.

This is an appeal filed by the appellant-State of Himachal Pradesh against the judgment of the court of learned JMIC, Bilaspur, dated 19.4.1999, vide which the appellants were acquitted of the charge framed against them under Sections 323, 341, 354 and 506 read with Section 34 I.P.C.

Briefly stated the facts of the case are that a report was lodged with the police by PW-1 Sunita Devi that on 13.3.1997 at about 12.30 p.m. she had gone to call her sister PW-6 Sonu Devi from the fields where she had gone for grazing their goats. It was alleged that when the complainant was crossing the *Nalah*, both the accused persons came there and accused Krishan Lal pressed her breasts and started tearing her clothes. She raised an alarm and her sister PW-6 Sonu Devi, her mother PW-4 Nanki Devi and her aunt PW-9 Banti Devi came there and the accused ran away and while leaving the place, they also gave her

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

threat. On this report, a case was registered and after investigation, the challan was filed as against the accused persons who were tried by the learned trial court leading to their acquittal, as detailed above.

I have heard Shri Ashutosh Burathoki, Additional Advocate General for the appellant and Shri Vinay Thakur, learned counsel for the respondents and have gone through the record of the case.

The submissions made by the learned Additional Advocate General were that the learned trial court had wrongly disbelieved the version of the complainant and other eye witnesses mainly on the ground that since they are closely related to the complainant, they are interested witnesses and as such their statements were wrongly disbelieved. It was submitted that there are no material contradictions in the statements of the eye witnesses and the persons working nereby had not come to the spot and witnessed the occurrence. Since they came afterwards and they were not material witnesses. Therefore, the statements of the relatives of the complainant, who are the only eye witnesses, have to be carefully appreciated which prove that the guilt of the respondent No.1 was established who was wrongly acquitted by the learned trial court which findings are, therefore, perverse and call for an interference by this Court. On the other hand, the learned counsel for the respondents submitted that there are various contradictions and infirmities in the statements of the witnesses who are close relatives of the complainant and other persons had also reached the spot as per evidence but they were not examined by the prosecution and, therefore, the statement of the complainant and her three relatives, in the absence of independent corroboration, cannot be relied upon. It was also submitted that if two views are possible from the evidence, the appeal against acquittal cannot be accepted until and unless there are observations of the court that those findings were perverse.

Coming to the evidence, the statements of the complainant and three eye witnesses examined by the prosecution have to be appreciated with care and caution. PW-1 Sunita Devi has stated that the accused persons suddenly came from bushes. Accused Kirshan Lal gave her beatings, tore her clothes and also pressed here breasts. No act was attributed to the other accused i.e. respondent No.2. She stated that she could not know who came to the spot since she became unconscious and regained consciousness only at the hospital. She also stated that the accused persons had also given threat to kill her. She only stated about the presence of her sister who came to the spot on hearing the cries but did not state about the presence of her mother or aunt since she stated that she became unconscious. It was suggested to her that she had taken a sum of Rs.5,000/- from the father of accused Krishan Lal for running a shop which suggestion was denied by her. She denied that when they demanded money, she falsely lodged this report. She admitted that she had to take Rs.97/- from Ram Dass who is not accused but the father of accused No.1 and he returned Rs.97/- only on the last date of hearing. The suggestion was also made to her that she was not having a good character and Panchayat had taken action against her twice and asked her to improve. It was also suggested to her that she had run away with Surjit Singh and stayed with him for 15-20 days and she denied the suggestion. She also denied the suggestion that she threw stones upon the accused persons and one Kuldip and Dhani Ram had prevented her from throwing the stones upon the accused persons. She denied the suggestion that the accused was falsely implicated because of enmity and demanding of money by the father of the accused.

PW-6 Sonu sister of the complainant has stated that about one year ago, she had gone for grazing goats and her sister came and stayed with the goats while she was sent to home to take meals. She

stated that at that time both the accused persons came there and accused Krishan Lal gave beatings to her sister and misbehaved with her, tore here clothes and when she raised an alarm, her mother and Banti Devi came there. In case she had already been sent for taking meals, how she could witness the occurrence is beyond comprehension. She denied the suggestion that their goats had gone to the land of the accused nereby, who had grown the wheat crop there. She stated that the quarrel continued for one hour. She admitted that her sister is running a shop while living with them.

PW-4 Smt.Nanki Devi mother of the complainant has stated that her sister Banti Devi had come to her house while her daughter Sonu was gone to graze the goats. She sent her daughter Sunita to call her. She went to the spot on hearing the noise and saw the accused persons there who had torn the clothes of her daughter and were giving beatings as well as abusing her and blood was oozing out form the nose of the complainant. The complainant herself never attributed any act to second accused while this witness has stated that both the accused persons gave beatings to the complainant, tore her clothes and were also abusing the complainant. The complainant and her sister never stated that the blood was oozing out from the nose, but this has been so stated by this witness. She further stated that the accused persons had caught hold of her daughter from her breasts, again stated that accused Krishan Lal had caught hold of her. She stated that they brought her daughter to the house but did not state that the complainant had become unconscious at that time. She denied the suggestion that the goats had gone to the land of the accused persons and in between their land and that of the accused, there is a *Nalah* and across the *Nalah*, there is land of the accused persons. Therefore, the possibility cannot be ruled out that the goats of the complainant party may have gone to the fields of the accused persons. In cross examination, she has stated

that the complainant had become unconscious. She further stated that she went to the spot after 2-3 hours of the quarrel which rules out the possibility that she may have actually witnessed the accused persons or accused Krishan Lal giving beatings to her daughter or committing indecent assault upon her. She denied the suggestion that her daughter had to pay Rs.5,000/- to the father of the accused persons. She also denied the suggestions that their goats had gone to the land of the accused and when they asked her daughter to remove them, they threw stones upon the person of Kuldip and Dhani Ram. She denied that the case was falsely made out because of enmity.

PW-9 Banti Devi is the aunt of the complainant who has stated that Sunita Devi had gone to call her sister and the accused persons were hiding behind the bushes who tore the clothes of Sunita Devi, gave her beatings and when Sonu raised an alarm, they went to the spot. She stated that when she reached at the spot, Krishan Lal had thrown Sunita Devi on the ground and had caught hold of her on wrong places and he ran away from the spot giving abuses. The complainant or other witnesses have nowhere stated that Krishan Lal had thrown Sunita Devi on the ground. She also stated that the complainant became unconscious. She stated that the blood had not oozed out from the injuries, which is contrary to the version as discussed above that the blood was oozing out from the nose of the complainant. Apart from the above, there is another aspect of the case as to whether persons were working nereby had come to the spot on hearing the cries and whether the occurrence was witnessed by them also or not. In this regard, PW-1 Sunita Devi has stated that the house of the accused persons was at a distance of 200 ft. from the place of occurrence. Her own house is at a distance of 100 ft. from the place of occurrence and there are 15-20 houses in that village. She admitted in cross examination that there is a

tower line near the place at a distance of 30-40 ft. where about 50 labourers were working at that time.

PW-6 Sonu has stated in this regard that at the spot the work of tower line was going on and 50-60 labourers were working there at a distance of 50-60 ft. She also stated that in the village there are 15-20 houses at a distance of 100 ft., though she stated that none from that village or from tower line came to the spot. PW-4 Nanki Devi mother of the complainant has stated in this regard that she does not know if the house of the accused persons is at a distance of 100 mtrs. from the place of occurrence. She stated that there are 15-20 houses in the village and the village is at a distance of 100 ft. from he place of occurrence. She also admitted that 50-60 labourers were working nereby in the tower line and she stated that all the labourers reached there which is contrary to the version of PW-6 Sonu. She also admitted that the house of the accused persons is at a distance of 100 ft. from the place of occurrence. PW-9 Banti Devi has stated in this regard that there are 15-20 houses in the village and the population is around 2000. She also admitted that the labourers were working nereby and the place of occurrence is visible from there house. She also stated that none from these labourers or houses came to the spot though the occurrence took place for nearly 1/2 hour. Their house is just in front of the place of occurrence across the *Nalah*.

The reference to the distance in between the place of occurrence and other places namely labourers who were working at the tower line or there is house of the accused and house of the complainant, has been made to show that it looks improbable that the accused will make an attempt to outrage the modesty of the complainant when the occurrence is alleged to have taken place during day time when labourers were working nereby and the houses of the accused and the complainant are nereby apart from the village. The evidence is also contrary in regard to

the fact as to whether labourers had come to the spot on hearing the noise or not. The learned trial court had also referred to the testimony of two DWs examined by the accused to show that version given by the complainant and her other relatives does not inspire confidence. Apart from above, the occurrence had taken place on 13.3.1997 but the FIR Ext.PA was lodged on 15.3.1997 and no explanation has been given by the complainant for the late lodging of the FIR though the place of occurrence stated to be at a distance of 25 kms. from Police Station, as per Ext.PA. The delay in question has not been explained and rather it makes the prosecution version doubtful in view of the relations between the parties and in view of the various suggestions made in regard to enmity in between the parties.

On a perusal of the above evidence led by the prosecution, it is clear that the learned trial court had come to the conclusion that the guilt of the accused persons cannot be said to have been established beyond any reasonable doubt and the said findings cannot be said to be perverse calling for an interference by this court and as such are liable to be affirmed. There is no merit in the appeal filed by the appellant which is dismissed accordingly.

(V.K. Ahuja),
Judge.

May 18, 2007.
(trs)